

Message Text

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43

ACTION OPIC-12

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R 200803Z MAR 74

FM AMEMBASSY KABUL

TO SECSTATE WASHDC 7231

UNCLAS KABUL 1705

PASS OPIC

E.O. 11652: N/A

TAGS: EFIN, AF

SUBJECT: YAQUB LEATHER INDUSTRIES PROJECT

REFS: (A) STATE 046869 (B) KABUL 1374

1. SUMMARY: IF PROJECT IS TO GO FORWARD, EMBASSY RECOMMENDS THAT OPIC ATTEMPT TO GAIN OFFICIAL TAX-EXEMPT STATUS BE POSTPONED UNTIL PROJECT IMPLEMENTED. AS DEVELOPMENT LENDER, IT AUTOMATICALLY HAS TAX-EXEMPT STATUS FOR AT LEAST FIVE YEARS UNDER AFGHAN LAW, AND ATTEMPT NOW TO OBTAIN SPECIAL STATUS WOULD MOST LIKELY CAUSE FURTHER SIGNIFICANT DELAY IN STARTING PROJECT. END SUMMARY.

2. 1967 FOREIGN AND DOMESTIC PRIVATE INVESTMENT LAW STATES (ARTICLE 3, SECTION ((D))) THAT "INTEREST ON FOREIGN LOANS WHICH CONSTITUTE PART OF AN APPROVED INVESTMENT SHALL BE COMPLETELY EXEMPT FROM PERSONAL INCOME TAX AND CORPORATE TAX." CURRENT DRAFTS OF THE PROPOSED REVISION OF THIS LAW USE ESSENTIALLY THE SAME LANGUAGE STRENGTHENED BY THE SPECIFIC ADDITIONAL EXEMPTION FROM "SUQUQ" TAXES (INVESTMENT TAXES NOT CURRENTLY BEING COLLECTED ON SUCH LOANS, BUT ON THE BOOKS). OTHER TAXES MENTIONED IN REFTEL (A) ARE, UNDER AFGHAN LAW, BORNE BY THE BORROWER, NOT THE LENDER.

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3. ARTICLE 5 OF THE 1967 LAW STATES "CAPITAL, PROFITS ACCRUING

TO FOREIGN INVESTORS, AND INSTALLMENT PAYMENTS ON LOANS RECEIVED FROM ABROAD MAY BE FREELY REPATRIATED IN THE ORIGINAL FOREIGN CURRENCY ON THE BASIS OF DA AFGHANISTAN BANK'S FREE MARKET RATE, IN ACCORDANCE WITH THE FOLLOWING PROVISIONS: (A) PAYMENT OF PRINCIPAL AND INTEREST TO THE EXTENT OF THE LEGAL OBLIGATION TO DO SO; (B) ... NO SIGNIFICANT CHANGE IN THIS ARTICLE IS EXPECTED IN THE REVISION. THIS APPEARS TO BE AS GOOD A GUARANTEE AS WE ARE LIKELY TO GET FROM THE GOA OF THE AVAILABILITY OF FOREIGN EXCHANGE TO SERVICE THE OPIC LOAN.

4. ONE INTERPRETATION OF THE 1967 LAW STATES THAT, SINCE NO EXEMPTIONS FOR THE PROJECT ARE GRANTED FOR MORE THAN FIVE YEARS, THESE PROVISIONS ON TAXES AND REPATRIATION OF LOAN FUNDS ARE ALSO LIMITED TO FIVE YEARS. OTHERS STATE THAT, SINCE NO TIME LIMITS ARE STATED IN THESE ARTICLES, THE PROVISIONS ARE GOOD FOR THE LIFE OF THE LOAN. IN EITHER CASE, THERE IS NO FORESEEN OBJECTION TO OPIC APPLYING SEPARATELY FOR TAX-EXEMPT STATUS ON ANY AND ALL LOANS, WITHOUT MAKING A CONNECTION WITH THE YAQUB PROJECT.

5. SUCH A SPECIFIC EXEMPTION WOULD BE NEW TO AFGHANISTAN AND WOULD CERTAINLY CAUSE SOME UNCERTAINTY IN THE GOA ABOUT OPIC AND THE YAQUB PROJECT. SINCE THIS COMES AT SUCH A LATE DATE IN THE PROJECT DEVELOPMENT, THE GOA MIGHT BECOME SUSPICIOUS THAT IT IS BEING RUSHED. AT MINIMUM THIS COULD RESULT IN A SIGNIFICANT DELAY IN IMPLEMENTING THE PROJECT, WORSE IT COULD CAUSE THE DENIAL OF THE TAX-FREE STATUS. THE LANGUAGE OF THE INVESTMENT LAW WOULD APPEAR TO BE THE BEST DOCUMENTATION AVAILABLE.

6. THE EMBASSY RECOMMENDS THAT OPIC PROCEED WITH THIS PROJECT UNDER THE GENERAL TAX-FREE STATUS IT ENJOYS AS A FOREIGN LENDER, AND SUBSEQUENTLY APPLY FOR SPECIAL STATUS AT ITS LEISURE. THIS OPINION IS SHARED BY LAWYER TARAKI AND CHECCHI TEAM PRIVATE ENTERPRISE ADVISOR AT MINISTRY OF MINES & INDUSTRIES.

7 LAWYER TARAKI FURTHER REPORTS THAT HE HAS BEEN PERIODICALLY CONSULTING WITH YAQUBS AND THEIR LAWYER ON IMPLEMENTATION OF THE PRECONDITIONS IN THE LOAN AGREEMENT. HE AND THE YAQUBS REPORT THAT THEY BELIEVE MOST REQUIREMENTS HAVE BEEN MET AND ALL CAN BE MET IN SHORT

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ORDER. BLANCHI OF IDBA IS AWAITING A RESPONSE TO HIS WORDING (REF B) AND IS PREPARED TO PROCEED IMMEDIATELY.

8. PLEASE NOTE THAT LAWYER TARAKI REPORTS HE HAS NOT YET BEEN PAID FOR ANY WORK BY OPIC. FOR THE MEANTIME, HE WILL CONTINUE TO WORK ON THIS CASE, BUT HE CANNOT AFFORD TO CONTINUE INDEFINITELY WITHOUT PAYMENTS.

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